

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Christopher C. Rose,
Debtor.

Case No: 03-36527-DDO

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: THE ABOVE NAMED DEBTOR, HIS ATTORNEY ROBERT J. HOGLUND AND MARIE F. MARTIN, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 21, 2004 at 9:30 a.m., or as soon thereafter as counsel can be heard, before Honorable Dennis D. O'Brien, in Court Room No: 228A, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 9:30 a.m. on October 18, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 12, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor's Chapter 7 case was filed on September 24, 2003. Charles W. Ries was appointed as Chapter 7 trustee on September 25, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy case.

6. By correspondence dated November 18, 2003; December 19, 2003; January 28, 2004; March 12, 2004; April 23, 2004; May 26, 2004; and September 28, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property of the estate and information necessary to complete case administration.

7. The debtor has failed to turn over:

- a. 2003 state and federal tax returns along with turnover of the estate's share of refunds;
- b. Bank statements from all accounts covering the date of filing and turnover of the non-exempt balance as of the date of filing;
- c. Verification and documentation of all payments over \$600 to unsecured creditors within the 90 days prior to the bankruptcy filing;

8. Because the debtor(s) failed to provide the requested information and assets, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704.

9. The trustee has incurred costs and expenses, including attorney fees in bringing this motion.

10. In order to ensure that the debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. § 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor(s) not promptly comply with its provisions.

11. This verified motion is based upon all of the files and records herein.

12. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor(s) to turn over to the trustee the following:
 - a. 2003 state and federal tax returns along with turnover of the estate's share of refunds;
 - b. Bank statements from all accounts covering the date of filing and turnover of the non-exempt balance as of the date of filing;
 - c. Verification and documentation of all payments over \$600 to unsecured creditors within the 90 days prior to the bankruptcy filing;
2. Directing the debtor(s) to complete the turnover of information and assets within 30 days of the entry of an order granting the trustee's motion.
3. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
4. For costs and attorney fees of \$250.00 in connection with bringing this motion.
5. For such other relief as the Court deems just and equitable.

Dated this 7th day of October, 2004

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN
JORUN GROE MEIERDING
TANYA M. JOHNSON
PHONE: 507.625.6600

November 18, 2003

Robert J. Hoglund
Attorney at Law
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund:

Please provide the following to me:

1. Copy of the listing agreement on the cabin.
2. Copies of the 2003 tax returns when filed and 73 percent of any refunds.
3. Copies of the bank statements covering the date of filing and turnover of any monies over the \$15 exempted.
4. Provide an accounting for the \$1,700 cashed out from the debtor's 401k.
5. Provide an accounting for the \$5,000 from the sale of two ATVs.

My inclination is to object to the claim of exemption in the cabin but I would like to see the listing agreements and I would certainly consider the debtor's argument relative to the value.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

UNION SQUARE BUSINESS CENTER • SUITE 200
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
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*BOARD CERTIFIED AS CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY AND/OR THE MINNESOTA STATE BAR ASSOCIATION
*ALSO ADMITTED IN SOUTH DAKOTA



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN
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TANYA M. JOHNSON

PHONE: 507.625.6600

December 19, 2003

Robert J. Hoglund
Attorney at Law
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund:

You will find enclosed my letter to you dated November 18, 2003. I would appreciate it if you would forward to me the request information and monies as soon as possible.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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TANYA M. JOHNSON*

January 28, 2004

PHONE: 507.625.6600

Robert J. Hoglund
Attorney at Law
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund:

Conceptually, I am agreeable to your proposal of settlement. My suggestion, however, is that we list the property for sale and that if the debtor is able to arrange refinancing before the property is sold, he pay the estate the "equity" in the property based upon the listing price or some other agreeable price. I would accept the cash in satisfaction of the estate's interest.

For purposes of determining the exemption, however, I would want the debtor to be responsible for his pro-rata share of costs of sale, including closing costs.

I believe the exemption is for the homestead in the species that it existed on the date of filing and the cost of converting it to cash.

Provided that the debtor is willing to bear his portion of the sales expense and attempt to sell the property, I would be willing to enter into a stipulation to that effect.

Thank you for the information attached to your fax of January 15th. Please have the debtor verify that he did not pay any creditor more than \$600 within the 90 days before filing; I noticed a payment of \$566 to Capital One on June 18, 2003.

It would appear that the debtor had \$600 in the Bremer Bank checking account, #10120532 as of the date of filing and \$123.06 in the Bremer Bank savings account, #63116756. This will need to be kept in mind for the final (d)(5) calculation. I also believe I am missing another savings account statement, possibly from IBM Credit Union.

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January 28, 2004
Page 2

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. W. Ries', written over a horizontal line.

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra



March 12, 2004

Marie Martin
PO Box 130938
Roseville MN 55113

651-628-9929

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Ms. Martin:

This is in response to your voice mail of March 10th and our follow-up phone conversation.

I am agreeable to having the debtor pay the estate the difference between the appraised value and the amount of the debt and available exemption for his one-half share. I would like to reduce this to a written stipulation. In that regards, we would like to have the amount of the available exemption reduced to a specific dollar. To do this, I will need to know the amount of any tax refunds, the bank account balance I believe is verified at \$123.06, the amount of accrued wages, and I would then use the scheduled value for the other assets.

I also understood that if the property is sold, the debtor would bear his share of closing costs on the resale.

We talked about whether the estate would reduce the settlement for a portion of the refinancing costs. I would consider that after I obtain the numbers.

It is my understanding the debtor should know in the next couple of days whether the refinancing went through.

I look forward to hearing from you.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:am

GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN*
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GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY
CHARLES W. RIES
JOHN CHUCK PETERSON
RENEE C. RUBISH
PAUL J. SIMONETT

PHONE: 507.625.6600

April 23, 2004

Robert J. Hoglund
Hoglund, Chwialkowski & Greeman
Attorney at Law
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund:

Enclosed please find the Court Order denying the debtor's exemption on his homestead.
Please provide me with the current status of the foreclosure and the refinancing.

Please remind the debtor that I need copies of his 2003 state and federal returns.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:ja

Enc.



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING•
TANYA M. JOHNSON•

PHONE: 507.625.6600

May 26, 2004

Robert J. Hoglund
Marie F. Martin
Hoglund, Chwialkowski & Greeman
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund & Ms. Martin:

Originally, the agreement was that the debtor was to list his homestead in order to pay the estate the value over and above his available exemption. After continuing the Objection to Claimed Exemption hearing date three times, the debtor did not cooperate and the homestead exemption has been denied. I received Ms. Martin's letter dated May 17th that she doesn't have the listing information for the debtor's homestead. Any equity otherwise property of the debtor is now property of the estate. I want the complete name and address of the realtor, contact phone numbers and copies of all realtor documents.

The debtor also needs to turnover copies of the 2003 tax returns and 73% of any refunds and copies of the IBM Credit Union statement covering the date of filing.

The debtor only exempted \$15 for bank account balances. The Bremer checking and savings add up to \$723.06; therefore, \$708.06 needs to be turned over immediately. The IBM Credit Union balance will also have to be turned over immediately.

The debtor also needs to verify whether any one creditor did not receive more than \$600 within the 90 days prior to the bankruptcy filing.

If we do not receive this by June 4, 2004, I intend to bring a turnover motion and request attorney fees in that regards.

Sincerely,

Charles W. Ries

cw_ries@mrr-law.com

CWR:jmm

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JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING*
TANYA M. JOHNSON*

PHONE: 507.625.6600

September 28, 2004

Robert J. Hoglund
Marie F. Martin
Hoglund, Chwialkowski & Greeman
PO Box 130938
Roseville MN 55113

RE: Christopher C. Rose
Bankruptcy No: 03-36527-DDO

Dear Mr. Hoglund & Ms. Martin:

Enclosed please find my letter to you dated May 26, 2004. Please provide me with a response within the 5 days or it is my intention to file a turnover motion.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 03-36527-DDO

Christopher C. Rose,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on September 24, 2003, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on September 25, 2003.
3. The trustee made demand upon the debtor(s) for turnover of information needed to administer the bankruptcy case on November 18, 2003; December 19, 2003; January 28, 2004; March 12, 2004; April 23, 2004; May 26, 2004; and September 28, 2004, as shown in Exhibit A to the instant motion, and incorporated therein.
4. The debtor(s) failed to supply necessary information to the trustee in response to the turnover demand.
5. The debtor(s) continue to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor(s)' failure to supply necessary information, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor(s) provide information regarding 2003 state and federal tax returns along with turnover of the estate's share of refunds; bank statements from all accounts covering the date of filing and turnover of the non-exempt balance as of the date of filing; and verification and documentation of all payments over \$600 to unsecured creditors within the 90 days prior to the bankruptcy filing.

2. Forfeiture of Discharge.

Under 11 U.S.C. 727(a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 727(a)(6)(A) so that the debtor(s) will have an additional incentive to perform in a timely manner.

Based upon the foregoing the Chapter 7 trustee is entitled to an Order requiring that the debtor(s) turn over non-exempt funds, if any, and information requested in Exhibit A to the Motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. 727(a)(6)(A).

Dated this 7th day of October, 2004.

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 03-36527-DDO

Christopher C. Rose,

Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 7th day of October, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Christopher C. Rose
30756 Seventh Place
Danbury, WI 54830

Robert J. Hoglund
Hoglund, Chwialkowski & Greeman
PO Box 130938
Roseville, MN 55113

Marie F. Martin
Hoglund, Chwialkowski & Greeman
PO Box 130938
Roseville, MN 55113

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janet Anderson_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Christopher C. Rose,
Debtor(s).

Case No: 03-36527-DDO

ORDER

The above captioned matter came before the Court on the _____ day of _____, 2004, on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring the debtor(s) to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor(s) shall turn over to the trustee within thirty (30) days of the entry of this Order:
 - a. 2003 state and federal tax returns along with turnover of the estate's share of refunds;
 - b. Bank statements from all accounts covering the date of filing and turnover of the non-exempt balance as of the date of filing;
 - c. Verification and documentation of all payments over \$600 to unsecured creditors within the 90 days prior to the bankruptcy filing;
2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor(s) fail to comply with its terms in a timely manner.
3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Charles W. Ries as Trustee for the estate within 10 days of entry of this Order.

Dated this _____ day of _____, 2004.

Honorable Dennis D. O'Brien
United States Bankruptcy Judge